Affiliated Midwest Hospital Incorporated d/b/a Riveredge Hospital and Warehouse, Mail Order, Office, Technical and Professional Employees Local 743, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 13-CA-22691

3 August 1983

DECISION AND ORDER

By Chairman Dotson and Members Zimmerman and Hunter

Upon a charge filed on 2 November 1982 by Warehouse, Mail Order, Office, Technical and Professional Employees Local 743, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Charging Party, and duly served on Affiliated Midwest Hospital Incorporated d/b/a Riveredge Hospital, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a complaint on 24 November 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that following a Board election in Cases 13-RD-1250 and 13-RM-1283, and in Cases 13-RD-1252 and 13-RM-1281, the Board on 30 September 1982 issued a Supplemental Decision, Certification of Results of Election, and Certifications of Representative in Riveredge Hospital, wherein it certified Hospital Employees' Labor Program, Local 73 (herein called HELP), an association composed of various constituent labor organizations including the Charging Party, as the collective-bargaining representative of Respondent's employees in the units found appropriate; and that commencing on or about 26 Octo-

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ber 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with HELP as the exclusive bargaining representative, although HELP has requested and is requesting it to do so. The complaint also alleges that, since on or about 26 October 1982, Respondent has failed and refused to supply HELP, as requested, with certain specified information which is necessary for collective bargaining. On 6 December 1982 Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations of the complaint.

On 17 January 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on 24 January 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause and a Cross-Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Cross-Motion for Summary Judgement, and response to the Notice To Show Cause, Respondent admits that it has refused to bargain and supply the requested information, but attacks HELP's certification on the basis that the Board erroneously overruled its objections in the representation proceeding and that the Board erred in applying its new misrepresentation rule retroactively to the facts of this case.³ Counsel for General Counsel argues that there are no matters warranting a hearing because the issues concerning HELP's certification were litigated and determined in the underlying representation cases. We agree with the General Counsel.⁴

A review of the record herein, including the record in Cases 13-RD-1250 and 13-RM-1283, and Cases 13-RD-1252 and 13-RM-1281, indicates

¹ Reported at 264 NLRB 1094.

² Official notice is taken of the record in the representation proceeding, Cases 13-RD-1250 and 13-RM-1283 and 13-RD-1252 and 13-RM-1281, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See LTV Electrosystems, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); Golden Age Beverage Co., 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); Intertype Co. v. Penello, 269 F.Supp. 573 (D.C.Va. 1967); Follett Corp., 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

³ We find no merit to Respondent's contention that the Board should have deviated from its normal practice of applying its decisions retroactively.

³ Respondent correctly notes that the Board in its Supplemental Decision, Certification of Results of Election, and Certifications of Representative, 264 NLRB 1094, erroneously stated that Respondent had failed to file exceptions to the Regional Director's overruling its Objection 3(b) alleging that HELP had misrepresented that Respondent had pushed for decertification. Although Respondent failed to file a motion for reconsideration on this issue, we have considered the objection on its merits and overrule it on the basis of *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), which issued prior to the above-cited decision.

that on 13 August 1979 the Regional Director approved Stipulations for Certification Upon Consent Elections for separate collective-bargaining units in the aforecited cases. In each of the two elections conducted on 17 October 1979, HELP received a majority of the votes cast. Thereafter, Respondent filed timely objections to the election alleging, *inter alia*, that the Regional Office distributed notices of election containing unit descriptions that were materially different from the units stipulated to in the election agreements, and that HELP misrepresented that the Board had filed a complaint against Respondent (Objections 2 and 3(a), respectively).

On 21 November 1979, after investigation of Respondent's objections to the election, the Regional Director issued his Report on Objections in which he found, without ruling on any of the other objections, that Respondent's Objection 2 was meritorious because the parties failed to reach a meeting of the minds as to the appropriate units, and recommended that the elections be set aside. Subsequently, on 14 August 1980, the Board issued a Decision and Direction, 5 in which it found merit to HELP's exceptions to the Regional Director's Report on Objections and remanded the cases for further investigation.

On 30 September 1980, after further investigation, the Regional Director issued a Supplemental Report on Objections, in which he recommended that Respondent's Objection 3(a) be sustained, that all other objections be overruled, and that the elections be set aside. Thereafter, on 30 September 1982, the Board issued its aforementioned Supplemental Decision reversing the Regional Director's recommendation to sustain Respondent's Objection 3(a), and certifying HELP as the bargaining representative of the units here at issue.

It thus appears that Respondent is attempting to raise herein issues which were raised and determined in the underlying representation cases. It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.⁶

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the

decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the General Counsel's Motion for Summary Judgment, and deny Respondent's Cross-Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Delaware corporation, is engaged in the operation of an acute care psychiatric hospital in Forest Park, Illinois. During the past calendar or fiscal year, Respondent derived gross revenues in excess of \$250,000 and purchased goods valued in excess of \$50,000 directly from sellers located outside the State of Illinois.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Charging Party and HELP are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The units

The following groups of employees of Respondent constitute units appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All service and maintenance employees, including only EKG/EST Technicians, P.B.X. operators, receptionists, medical transcriptionists, medical library clerk, unit clerk, head cook, dietary aides, salad technician, relief cooks, housekeeping aides, floor care workers, laundry coordinator, painters, carpenters, maintenance workers, and medical technicians employed by Respondent at its Forest Park hospital, but excluding all other employees, guards and supervisors as defined in the Act.

All technical employees, including only audiovisual technician, mental health technicians, mental health counselors, mental health team leaders, adolescent counselors, alcoholism

⁵ Reported at 251 NLRB 196.

⁶ See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

counselors, activity therapists, licensed practical nurses, laboratory technician and certified occupational therapy assistants employed by Respondent at its Forest Park hospital, but excluding all other employees, guards and supervisors as defined in the Act.

2. Certification

On 17 October 1979 a majority of the employees of Respondent in each of the said units, in a secret-ballot election conducted under the supervision of the Regional Director for Region 13, designated HELP as their representative for the purpose of collective bargaining with Respondent.

HELP was certified as the collective-bargaining representative of the employees in each of the said units on 30 September 1982 and HELP continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. The Request To Bargain and Respondent's Refusal

Commencing on or about 14 October 1982, and at all times thereafter, HELP has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in each of the above-described units, and has also requested that Respondent supply it with information necessary for collective bargaining, including the names, addresses, and telephone numbers of employees in said units, their job classifications and departments, their current wage rates and fringe benefits, and handbooks describing grievance resolution, job assignment selection, seniority rights, layoff and recall procedures, and appeals of disciplinary matters concerning such employees. Commencing on or about 26 October 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with HELP as the exclusive representative for collective bargaining of the employees in said units, and to furnish HELP with the foregoing requested information.

Accordingly, we find that Respondent has, since 26 October 1982, and at all times thereafter, refused to bargain collectively with HELP as the exclusive representative of the employees in the appropriate units, including refusing to furnish it with certain requested information necessary for collective bargaining, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with HELP as the exclusive representative of all employees in the appropriate units, and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that it supply HELP with information requested for the purpose of collective bargaining.

In order to ensure that the employees in each of the appropriate units will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of each certification as beginning on the date Respondent commences to bargain in good faith with HELP as the recognized bargaining representative in the appropriate units. See Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

- 1. Affiliated Midwest Hospital Incorporated d/b/a Riveredge Hospital is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. Hospital Employees' Labor Program, Local 73 (HELP), and Warehouse, Mail Order, Office, Technical and Professional Employees Local 743, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America are labor organizations within the meaning of Section 2(5) of the Act.
- 3. The following groups of employees of Respondent constitute units appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All service and maintenance employees, including only EKG/EST Technicians, P.B.X. operators, receptionists, medical transcriptionists, medical library clerk, unit clerk, head cook, dietary aides, salad technician, relief cooks, housekeeping aides, floor care workers, laundry coordinator, painters, carpenters, maintenance workers, and medical technicians employed by Respondent at its Forest Park hospital, but excluding all other employees, guards and supervisors as defined in the Act. All technical employees, including only audiovisual technician, mental health technicians, mental health counselors, mental health team leaders, adolescent counselors, alcoholism counselors, activity therapists, licensed practical nurses, laboratory technician and certified occupational therapy assistants employed by Respondent at its Forest Park hospital, but excluding all other employees, guards and supervisors as defined in the Act.

- 4. Since 30 September 1982, HELP has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate units for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.
- 5. By refusing since on or about 26 October 1982, and at all times thereafter, to bargain collectively with HELP as the exclusive bargaining representative of all the employees of Respondent in each of the appropriate units, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
- 6. By refusing since on or about 26 October 1982 to supply HELP with information necessary for collective bargaining, including the names, addresses, and telephone numbers of the employees in the appropriate units, their job classifications and departments, their current wage rates and fringe benefits, and handbooks describing grievance resolution, job assignment selection, seniority rights, layoff and recall procedures, and appeals of disciplinary matters concerning such employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
- 7. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
- 8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Affiliated Midwest Hospital Incorporated d/b/a Riveredge Hospital, Forest Park, Illinois, its officers, agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Hospital Employees' Labor Program, Local 73, herein called HELP, as the exclusive bargaining representative of its employees in each of the following appropriate units:

All service and maintenance employees, including only EKG/EST Technicians, P.B.X. operators, receptionists, medical transcriptionists, medical library clerk, unit clerk, head cook, dietary aides, salad technician, relief cooks, housekeeping aides, floor care workers, laundry coordinator, painters, carpenters, maintenance workers, and medical technicians employed by Respondent at its Forest Park hospital, but excluding all other employees, guards and supervisors as defined in the Act.

All technical employees, including only audiovisual technician, mental health technicians, mental health counselors, mental health team leaders, adolescent counselors, alcoholism counselors, activity therapists, licensed practical nurses, laboratory technician and certified occupational therapy assistants employed by Respondent at its Forest Park hospital, but excluding all other employees, guards and supervisors as defined in the Act.

- (b) Refusing to supply the aforesaid labor orgnization with information necessary for collective bargaining, including the names, addresses, and telephone numbers of employees in the appropriate units, their job classifictions and departments, their current wage rates and fringe benefits, and the handbooks describing grievance resolution, job assignment selection, seniority rights, layoff and recall procedures, and appeals of disciplinary matters concerning such employees.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

- (a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate units with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.
- (b) Upon request, supply the above-named labor organization with information necessary for collective bargaining, including the names, addresses, and telephone numbers of employees in the appropriate units, their job classifications and departments, their current wage rates and fringe benefits, and handbooks describing grievance resolution, job assignment selection, seniority rights, layoff and recall procedures, and appeals of disciplinary matters concerning such employees.
- (c) Post at its Forest Park, Illinois, facility copies of the attached notice marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.
- (d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Hospital Employees' Labor Program, Local 73 (HELP), as the exclusive representative of the employees in the bargaining units described below.

WE WILL NOT refuse to supply HELP with information necessary for collective bargaining, including the names, addresses, and tele-

phone numbers of our employees in the units described below, their job classifications and departments, their current wage rates and fringe benefits, and handbooks describing grievance resolution, job assignment selection, seniority rights, layoff and recall procedures, and appeals of disciplinary matters concerning such employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, supply HELP with information necessary for collective bargaining, including the names, addresses, and telephone numbers of our employees in the units described below, their job classifications and departments, their current wage rates and fringe benefits, and handbooks describing grievance resolution, job assignment selection, seniority rights, layoff and recall procedures, and appeals of disciplinary matters concerning such employees.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining units described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining units are:

All service and maintenance employees, including only EKG/EST Technicians, P.B.X. operators, receptionists, medical transcriptionists, medical library clerk, unit clerk, head cook, dietary aides, salad technician, relief cooks, housekeeping aides, floor care workers, laundry coordinator, painters, carpenters, maintenance workers, and medical technicians employed by Respondent at its Forest Park hospital, but excluding all other employees, guards and supervisors as defined in the Act.

All technical employees, including only audio-visual technician, mental health technicians, mental health counselors, mental health team leaders, adolescent counselors, alcoholism counselors, activity therapists, licensed practical nurses, laboratory technician and certified occupational therapy assistants employed by Respondent at its Forest Park hospital, but excluding all other

⁷ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees, guards and supervisors as defined in the Act.

Affiliated Midwest Hospital Incorporated D/B/A Riveredge Hospital